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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,878	08/29/2001	David Partain	040020-290	7838
27045	7590	09/06/2005	EXAMINER	
ERICSSON INC. 6300 LEGACY DRIVE M/S EVR C11 PLANO, TX 75024			NGUYEN, PHUONGCHAU BA	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,878

Applicant(s)

PARTAIN ET AL.

Examiner

Phuongchau Ba Nguyen

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 7-21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 29 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Allowable Subject Matter

1. The indicated allowability of claims 7-14 is withdrawn in view of the newly discovered reference(s) to Strandberg (6,647,412). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 7-9, 14-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Strandberg (6,647,412).

Strandberg et al disclose as least one load measurement proxy (egress edge muter) which probes the network (sending status message to ingress edge muter),

Art Unit: 2665

bandwidth broker 12 which receives the status message and correlating congestion information (calculate, negotiate, accept or decline profile rule). The network status can be determined from several state parameters such as packet loss, delay rate, queue load, service rate and stability" col. 2, line 66- col. 3, line 3). The client query is not explicitly disclosed however it is inherent as bandwidth broker in Strandberg et al performs admission control based on the correlated status information. See admitted prior art page 4, paragraph [0017].

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims are rejected under 35 U.S.C. 103(a) as being unpatentable over Strandberg (6,647,412) in view of Westberg (Load Control of Real Time Traffic, April 2000).

Regarding claims 10 & 18, Strandberg discloses all the claimed limitations, except wherein the load measurement proxy continuously probes the network.

Westberg suggesting the initiating edge device would, how often and how many times, send a probe packet through the network. This suggestion inherently equates

Art Unit: 2665

with the claimed limitation "wherein the load measurement proxy continuously probes the network," see page 6, second paragraph.

Therefore, it would have been obvious to an artisan to apply Westberg's teaching into Strandberg with the motivation being to determine whether a flow can be admitted based upon the current congestion of the network.

Regarding claims 11 & 19, Strandberg discloses all the claimed limitations, except wherein the load measurement proxy probes the network at predefined intervals

Westberg suggests the initiating edge device would, how many times, send a probe packet through the network. This suggestion inherently equates with the claimed limitation "wherein the load measurement proxy probes the network at predefined intervals," see page 6, second paragraph.

Therefore, it would have been obvious to an artisan to apply Westberg's teaching into Strandberg with the motivation being to determine whether a flow can be admitted based upon the current congestion of the network.

Regarding claims 12 & 20, Strandberg discloses all the claimed limitations, except wherein the load measurement proxy probes the network in response to a network event

In Westberg, if congestion occurs, the core router detects the event, and marks the probe packet that has been sent from the initiating edge device, in response to the congestion event, see page 6, first paragraph, (corresponding to wherein the load measurement proxy probes the network in response to a network event).

Therefore, it would have been obvious to an artisan to apply Westberg's teaching into Strandberg with the motivation being to determine whether a flow can be admitted based upon the current congestion of the network.

Regarding claims 13 & 21, Strandberg discloses all the claimed limitations, except wherein the load measurement proxy determines the congestion state of the network for each of a plurality of traffic classes.

In Westberg the Differentiated Services (DS) field of the probe packet indicates the DiffServ class (corresponding to *traffic classes*) of the incoming flows from different resources. This fact suggesting that Westberg teaches the claimed limitation (corresponding to wherein the load measurement proxy determines the congestion state of the network for each of a plurality of traffic classes), see page 8, section 4.4-Codepoints for flow.


Therefore, it would have been obvious to an artisan to apply Westberg's teaching into Strandberg with the motivation being to determine whether a flow can be admitted based upon the current congestion of the network.

Art Unit: 2665


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchau Ba Nguyen whose telephone number is 571-272-3148. The examiner can normally be reached on Monday-Friday from 10:00 a.m. to 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Phuongchau Ba Nguyen
Examiner
Art Unit 2665

**DUCHO
PRIMARY EXAMINER**


8-31-05